

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-206362.4

DATE: August 5, 1982

MATTER OF: Anigroeg Services, Inc.

DIGEST:

1. Protest initially filed with the contracting agency is untimely and not for consideration on the merits, where filed in GAO more than 10 working days after the protester was notified by the agency both that its protest was denied and that award had been made to another bidder.
2. Protester's notification to GAO of its future intent to protest in the event the agency denied its protest did not constitute a viable protest and thus did not toll the running of the timeliness period for purposes of any future protest.

Anigroeg Services, Inc. protests the award of a contract to RayGo Corporation under invitation for bids (IFB) No. DLA700-82-B-1008, issued by the Defense Logistics Agency (DLA) as a total small business set-aside. The solicitation sought bids to supply 43 roller vibratory compactors. Anigroeg contends that the award to RayGo was improper since RayGo indicated in 1982 that it would have difficulty meeting the compaction rate required by the specification. It believes this apparent inability to meet the specification rendered RayGo's bid non-responsive or, in the alternative, necessitated a finding by DLA that RayGo was a nonresponsible bidder. We dismiss the protest as untimely.

Anigroeg first raised these allegations in a March 15, 1982 protest letter to the contracting officer. Under our Bid Protest Procedures, protests filed initially with the contracting agency must be filed in our Office within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a). The record here indicates that Anigroeg telephoned DLA on May 3

to ascertain the status of its March 15 protest, and was informed by DLA that: (1) RayGo had been found capable of meeting the specified compaction rate; (2) award had been made to RayGo on April 30; and (3) Anigroeg's protest had been denied by letter mailed to Anigroeg on April 30. As of May 3, then, Anigroeg had actual knowledge that DLA had taken action adverse to its interests in the procurement, and was required to file any protest of this action in our Office by May 17, ten working days later. Since we did not receive Anigroeg's protest until May 19, it is untimely and will not be considered on the merits.

Anigroeg argues that its protest was timely since on March 15 it sent our Office a copy of its protest to DLA, together with the following instructions:

" * * * In the event that the DLA contracting officer denies Anigroeg's protest, please consider the enclosed as a direct protest to the Comptroller General. * * *"

This communication was not a viable protest, but only notification of Anigroeg's future intent to protest. As such, it did not toll the running of the 10-day timeliness period for the purposes of the allegations raised here. See Autotronic Products, Inc.--Request for Reconsideration, B-198381.2, July 8, 1980, 80-2 CPD 18. We advised Anigroeg of this fact in a March 23 letter responding to its March 15 submission. Our letter stated that:

"Since your protest to our Office is contingent upon the outcome of your protest to DLA, it is not for consideration at this juncture. Should your protest be denied by DLA, or should DLA take other action adverse to Anigroeg, your protest must then be timely filed in our Office in accordance with the guidelines set forth in our Bid Protest Procedures. 4 C.F.R. Part 21 (1981). * * *" (emphasis added)

- Because Anigroeg failed to challenge DLA's adverse action within 10 working days, its protest was untimely. Since we also agree with DLA that Anigroeg has raised no issue significant to the procurement process, the protest is dismissed.

Fw *J. H. Barclay*
Harry R. Van Cleve
Acting General Counsel

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Fv *J. H. Barclay*
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